

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MICHAEL GRESHAM,

Plaintiff,

Case No. 1:12-cv-143

v.

Honorable Janet T. Neff

RICK SNYDER et al.,

Defendants.

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**OPINION DENYING LEAVE  
TO PROCEED IN FORMA PAUPERIS - THREE STRIKES**

Plaintiff Michael Gresham, a prisoner incarcerated at Ionia Maximum Correctional Facility, filed a complaint pursuant to 42 U.S.C. § 1983. Plaintiff seeks leave to proceed *in forma pauperis*. Because Plaintiff has filed at least three lawsuits that were dismissed as frivolous, malicious or for failure to state a claim, he is barred from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g). The Court will order Plaintiff to pay the \$350.00 civil action filing fee within twenty-eight (28) days of this opinion and accompanying order, and if Plaintiff fails to do so, the Court will order that his action be dismissed without prejudice. Even if the case is dismissed, Plaintiff will be responsible for payment of the \$350.00 filing fee in accordance with *In re Alea*, 286 F.3d 378, 380-81 (6th Cir. 2002).

**Discussion**

The Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996), which was enacted on April 26, 1996, amended the procedural rules governing a prisoner's request for the privilege of proceeding *in forma pauperis*. As the Sixth Circuit has stated, the PLRA

was “aimed at the skyrocketing numbers of claims filed by prisoners – many of which are meritless – and the corresponding burden those filings have placed on the federal courts.” *Hampton v. Hobbs*, 106 F.3d 1281, 1286 (6th Cir. 1997). For that reason, Congress put into place economic incentives to prompt a prisoner to “stop and think” before filing a complaint. *Id.* For example, a prisoner is liable for the civil action filing fee, and if the prisoner qualifies to proceed *in forma pauperis*, the prisoner may pay the fee through partial payments as outlined in 28 U.S.C. § 1915(b). The constitutionality of the fee requirements of the PLRA has been upheld by the Sixth Circuit. *Id.* at 1288.

In addition, another provision reinforces the “stop and think” aspect of the PLRA by preventing a prisoner from proceeding *in forma pauperis* when the prisoner repeatedly files meritless lawsuits. Known as the “three-strikes” rule, the provision states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under [the section governing proceedings *in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The statutory restriction “[i]n no event,” found in § 1915(g), is express and unequivocal. The statute does allow an exception for a prisoner who is “under imminent danger of serious physical injury.” The Sixth Circuit has upheld the constitutionality of the “three-strikes” rule against arguments that it violates equal protection, the right of access to the courts, and due process, and that it constitutes a bill of attainder and is *ex post facto* legislation. *Wilson v. Yaklich*, 148 F.3d 596, 604-06 (6th Cir. 1998); accord *Pointer v. Wilkinson*, 502 F.3d 369, 377 (6th Cir. 2007) (citing

*Wilson*, 148 F.3d at 604-06); *Rodriguez v. Cook*, 169 F.3d 1176, 1178-82 (9th Cir. 1999); *Rivera v. Allin*, 144 F.3d 719, 723-26 (11th Cir. 1998); *Carson v. Johnson*, 112 F.3d 818, 821-22 (5th Cir. 1997).

Plaintiff has been an extremely active litigant in this Court, having filed more than thirty civil actions. The Court has dismissed more than three of Plaintiff's actions for failure to state a claim. *See Gresham v. Caruso et al.*, No. 2:10-cv-196 (W.D. Mich. Oct. 27, 2011); *Gresham v. Wolak et al.*, No. 2:10-cv-239 (W.D. Mich. July 25, 2011); *Gresham v. Caruso et al.*, No. 2:10-cv-195 (W.D. Mich. Apr. 11, 2011); *Gresham v. Paine et al.*, No. 1:10-cv-1146 (W.D. Mich. Mar. 8, 2011); *Gresham v. Caruso et al.*, No. 1:10-cv-1038 (W.D. Mich. Jan. 26, 2011); *Gresham v. Verville et al.*, No. 2:10-cv-198 (W.D. Mich. Jan. 19, 2011); *Gresham v. Mich. Dep't of Corr. et al.*, No. 2:07-cv-241 (W.D. Mich. June 9, 2008). In addition, the Court previously has denied Plaintiff leave to proceed *in forma pauperis* because he has three strikes. *See Gresham v. Mutschler et al.*, No. 2:12-cv-9 (W.D. Mich. Feb. 12, 2012); *Gresham v. Violetta et al.*, No. 2:12-cv-24 (W.D. Mich. Feb. 6, 2012); *Gresham v. Dahl et al.*, No. 2:12-cv-21 (W.D. Mich. Feb. 6, 2012); *Gresham v. Napel et al.*, No. 2:11-cv-520 (W.D. Mich. Feb. 6, 2012); *Gresham v. Snyder et al.*, No. 2:12-cv-5 (W.D. Mich. Jan. 27, 2012); *Gresham v. LaChance et al.*, No. 2:11-cv-231 (W.D. Mich. June 24, 2011); *Gresham v. Canlis et al.*, No. 2:11-cv-179 (W.D. Mich. June 9, 2011); *Dennis v. Canlis*, No. 2:11-cv-186 (W.D. Mich. June 6, 2011).

This is the seventh case filed by Plaintiff in less than two months in which he seeks to invoke the statutory exception for a prisoner who is under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g). The Sixth Circuit has recognized the standard previously adopted by other circuit courts:

While the Sixth Circuit has not defined the term “imminent danger” for purposes of this section, other Circuits have held that to meet the requirement, the threat or prison condition “must be real and proximate” and the danger of serious physical injury must exist at the time the complaint is filed. *See, e.g., Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003); *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 313 (3d Cir. 2001) (en banc). Thus a prisoner’s assertion that he or she faced danger in the past is insufficient to invoke the exception. *Id.* Other Circuits also have held that district courts may deny a prisoner leave to proceed pursuant to § 1915(g) when the prisoner’s claims of imminent danger are “conclusory or ridiculous,” *Ciarpaglini*, 352 F.3d at 331, or are “‘clearly baseless’ (i.e. are fantastic or delusional and rise to the level of ‘irrational or wholly incredible.’)” *Gibbs v. Cross*, 160 F.3d 962, 967 (3d Cir.1998) (quoting *Denton v. Hernandez*, 504 U.S. 25, 33 (1992)).

*Rittner v. Kinder*, 290 F. App’x 796, 797-98 (6th Cir. 2008); *see also Vandiver v. Vasbinder*, 416 F. App’x 560, 561-62 (6th Cir. 2011) (imminent danger must be contemporaneous with the complaint’s filing); *Pointer v. Wilkinson*, 502 F.3d 369, 371 n.1 (6th Cir. 2007) (holding that assertions of past danger do not satisfy the imminent-danger exception).

Throughout his complaint, which is difficult to follow, Plaintiff makes a variety of sweeping assertions that he is in imminent danger, but makes few specific factual allegations in support of his claim. He names 46 Defendants, including the governor, departments of the state, officials of the central administration of the Michigan Department of Corrections, and officials at the Marquette Branch Prison. Plaintiff claims that Defendants collectively have failed adequately to treat certain lumps in his genital area and two hernias. He also alleges that the undifferentiated Defendants have forced him to take psychotropic medications to treat mental illness, which he denies having. Plaintiff suggests that the Defendants collectively are attempting to make him look mentally ill in order to prevent him from successfully litigating another lawsuit, in which he claims that two employees of the Ionia Maximum Correctional Facility raped him on July 10, 2009. *See Gresham v. Granholm et al.*, No. 2:09-cv-231 (W.D. Mich.). The bulk of Plaintiff’s 53-page complaint, and of his 121 pages of rambling attachments, consists of a lengthy address to “Andrea”

(apparently, Defendant Psychiatric Nurse Practitioner Andrea Mosley). Plaintiff repeatedly advises “Andrea” to read certain materials about race and religion and to make her medical determination based on Plaintiff’s belief system. The following excerpt (verbatim) is representative of the irrationality of the complaint:

First I’d like to address Facts My Theory is not a (delusion) This is Another Attempt at Pascoe, Eyke, Oshier, Bushongs, Patel, Wolaks belittling of My Educational and Scientific Achievement. . You know what? Andrea Something you should notice They are all white. . And I apologize if My insights upset or/enrage You But You should Know I do not hate whites I have white Brothers and sisters I love.

But traditionally The White Male has been a Barbarian seeking to overtake by WAR, Pillage, Rape and at last Indoctrination. Something that You have been coerced to do out of Fear For Your Job and respect on The Job.

This is called A system (of oppression)

(Compl., docket #1, Page ID#14.) Such irrational allegations fall far short of demonstrating that Plaintiff is in imminent danger of serious bodily injury.

In addition, Plaintiff previously filed a complaint with similar broad allegations about being involuntarily treated with psychotropic medications. *See Gresham v. Snyder et al.*, No. 2:12-cv-5 (W.D. Mich.). In that action, the Court determined that Plaintiff’s largely irrational and conclusory allegations did not fall within the imminent-danger exception to the three-strikes rule. Moreover, since the filing of the previous lawsuit, Plaintiff has been transferred from the Marquette Branch Prison to the Ionia Maximum Correctional Facility. As previously discussed, assertions of past danger do not satisfy the imminent-danger exception. *Rittner*, 290 F. App’x at 797-98; *Pointer*, 502 F.3d at 371 n.1. Because the Defendants in this action are at the Marquette Branch Prison, Plaintiff no longer is at risk from any allegedly inadequate treatment provided by those Defendants. For all these reasons, Plaintiff’s allegations do not fall within the exception to the three-strikes rule because he does not allege facts establishing that he is in imminent danger of serious physical injury.

In light of the foregoing, § 1915(g) prohibits Plaintiff from proceeding *in forma pauperis* in this action. Plaintiff has twenty-eight (28) days from the date of entry of this order to pay the entire civil action filing fee, which is \$350.00. When Plaintiff pays his filing fee, the Court will screen his complaint as required by 28 U.S.C. § 1915A and 42 U.S.C. § 1997e(c). If Plaintiff fails to pay the filing fee within the 28-day period, his case will be dismissed without prejudice, but he will continue to be responsible for payment of the \$350.00 filing fee.

Dated: March 6, 2012

/s/ Janet T. Neff

Janet T. Neff

United States District Judge

**SEND REMITTANCES TO THE FOLLOWING ADDRESS:**

Clerk, U.S. District Court  
399 Federal Building  
110 Michigan Street, NW  
Grand Rapids, MI 49503

**All checks or other forms of payment shall be payable to “Clerk, U.S. District Court.”**